

notwithstanding his inability to amend the priorities that may come up.

DELEGATE EICHHORN: This section would not permit the Governor to reduce the proposed budget in transmitting it to the legislature.

The Governor would have to transmit the budget as proposed by the judiciary, with recommendation stating that the Governor would recommend the reduction or an increase but the Governor may not do that. The integrity of the judiciary is protected. The Governor's view may be made known.

Further, the Governor need not fund the entire proposed budget in order to balance the budget for the state. The Governor may, instead, recommend a reduction of X millions and propose a total financing package which only addresses that which the Governor supports in the way of appropriations.

The legislature may then choose to fund the entire judiciary budget which is larger and must find the funding and identify it -- by a new tax or some other manner.

Now, are you saying that in your proposal that the Governor could reduce the budget of the judiciary before sending it to the legislature?

DELEGATE COATES: That is correct.

That is correct. And as I understand -- from

what you say, there are two things. You seem to be saying on the one hand that the Governor cannot reduce the funding and on the other hand you seem to say that he can.

DELEGATE EICHHORN: Now, he cannot reduce -- he has to send the full request to the legislature. But he or she may recommend, in sending that request. That is a traditional way of handling it.

DELEGATE COATES: Madam Chair, your purpose in recognizing me in part was to respond to Delegate Shelton. I really do not know how to respond to her by comment on the judiciary. I do not understand it. But I can make clear to you, Delegate Shelton --

DELEGATE SHELTON: I am clear.

DELEGATE COATES: -- that the recommendations from the Committee on Finance and Taxes allows the Governor to decrease the funding request from the court system in the submission that he makes to the legislature.

CHAIRPERSON FREEMAN: Thank you, Delegate Coates.

DELEGATES COATES: I might, parenthetically, add that in the same manner that is in the Home Rule Charter, the submission from the D.C. Board of Education can be reduced by the Mayor.

CHAIRPERSON FREEMAN: Delegate Mason.

DELEGATE CHARLES MASON: I believe that we should leave it as it is now. If, when we come to the second reading, there are two different articles dealing with this subject, the Committee on Style and Drafting will point out the discrepancy and then it is up to the Convention to resolve the conflict and decide which place it should be, if in only one.

And at this time I would oppose dropping this.

The motion is to adopt it and I favor adoption.

DELEGATE CORN: Point of order, Madam Chair.

Point of order, Madam Chair. As a member of the Committee on Style and Drafting, I would like to make it very clear, where an article is to go, whatever the wording would be or whoever would be empowered to fund this, the judicial branch, certainly is up to the Committee on Style and Drafting.

However, if you adopt this specific language now and the Tax and Finance Committee has a different --

CHAIRPERSON FREEMAN: Delegates who are having conversations on the floor, you are out of order. Delegates Schrag and Kameny and Love and Jordan, please sit down. You are out of order.

Delegate Corn, you may continue.

DELEGATE CORN: As the Chair of the Committee on Style and Drafting, I can tell you this. If there is an

article that is clear enough on how the judiciary is funded and the Tax and Finance Committee has an article on how the judiciary is funded and the Executive Committee has another article on how the judiciary is funded -- if there are five committees that have articles on how the judiciary is funded, if they basically all say the same thing, it certainly will be up to the Style and Drafting Committee on where to place that article, however it shall occur.

However, my major fear is that if you adopt this now and then Tax and Finance has a different article that is somewhat different and you may very well adopt that then -- and the Executive Branch has something else and you may adopt that at that time, you will be forcing the Style and Drafting Committee to come back to this group on second reading and say, "Ah hah, we certainly have found a large inconsistency."

DELEGATE KAMENY: That is what you are there for.

DELEGATE CORN: That is not what we are there for. And that will take up a lot of time on second reading and unnecessarily so. Therefore, I don't know whether there is a motion on the floor to this effect or not but if there is not, I would strongly urge that this go back to the Judiciary and the Taxation and the Executive Branch Committees for them to work this out and come in with one article.

CHAIRPERSON FREEMAN: Delegate Corn, the motion 3.19 belongs to the body at this point.

Delegate Eichhorn had her hand up and then Delegate Simmons. Delegate Simmons.

DELEGATE SIMMONS: I would like to have the Counsel share with us what thinking he may possess having had the benefit of all of this discussion.

I request it, Madam President. Thank you.

CHAIRPERSON FREEMAN: Yes. Mr. Thomas, would you please answer that question?

MR. THOMAS: Yes, first of all, the financing section of this article is not unusual and in fact was recommended in the Model State Constitution. And usually, in that article, they state generally that the fact that the Chief Justice will submit a budget to the executive and how it is handled after that depends on that particular constitution.

DELEGATE SIMMONS: Thank you.

CHAIRPERSON FREEMAN: Delegate Eichhorn.

DELEGATE EICHHORN: One of the reasons for not allowing the Governor to send on a reduced budget or an increased budget -- which is not likely -- is that the Governor is involved in litigation with the courts.

My job involves a court action. We are under

court orders. That is not uncommon.

And so this avoids that process without removing from the Governor influence and recommendations to the legislature but removes that possible conflict of interest. That is the rationale for it and it is not uncommon. I think it is traditional to be handled in that way.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I would like to call the question and I want to make sure everybody who wants to has spoken on this article.

CHAIRPERSON FREEMAN: Are there any people who have not spoken? Every person who had his hand in the air has spoken on this. Any body else?

DELEGATE GARNER: I call the question, then.

[The question is called.]

CHAIRPERSON FREEMAN: Delegates, the question has been called. Is there a second?

[There is a second.]

CHAIRPERSON FREEMAN: It has been moved and seconded that we close debate, Delegates, on this section, 3.19. All those in favor of closing debate --

DELEGATE CORN: Why would we want to create extra work for ourselves?

DELEGATE COOPER: [Inaudible.]

CHAIRPERSON FREEMAN: Excuse me, Delegate Cooper?

DELEGATE COOPER: [Inaudible.]

CHAIRPERSON FREEMAN: A point of information, Delegates, what we are closing debate on is section 3.19, the Garner Amendment was withdrawn.

All those in favor of closing debate on 3.19, please say aye.

[There is a chorus of ayes.]

All those opposed.

[Two persons are opposed. Debate is closed.]

CHAIRPERSON FREEMAN: Debate is now closed on 3.19.

SEVERAL PERSONS: Not transcribable.

CHAIRPERSON FREEMAN: Excuse me, I can't understand anything. Delegates, you are out of order.

Delegate Rothschild.

DELEGATE ROTHSCCHILD: Thank you. Is it 3.19 as we have it in our original document? Is that what we closed debate on?

CHAIRPERSON FREEMAN: That is correct.

DELEGATE ROTHSCCHILD: Thank you.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: Did you say debate is "not" closed or is "now" closed?

CHAIRPERSON FREEMAN: I said it is now closed.

DELEGATE KAMENY: Fine. That is all I wanted to know.

DELEGATE CORN: How now, brown cow.

CHAIRPERSON FREEMAN: All those in favor of adopting section 3.19 as it reads, please say aye.

[There is a chorus of ayes.]

All those opposed?

[There is a chorus of opposition.]

CHAIRPERSON FREEMAN: I am going to ask for a division, please. All those who are in favor of adopting 3.19, please raise your hands.

DELEGATE CORN: Is there a quorum?

SECRETARY COOPER: 13.

CHAIRPERSON FREEMAN: All those who are opposed, please raise your hand.

Abstention.

CHAIRPERSON FREEMAN: All right, 3.19 is adopted. The vote was 13 in favor, 8 opposed and one abstention.

DELEGATE CORN: Is there a quorum?

SEVERAL VOICES: Yes.

DELEGATE BLOUNT: Madam Chairman, I move the adoption of Section 3.20, Rule-making.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

[There are several seconds.]

CHAIRPERSON FREEMAN: Thank you. Discussion.
Delegate Blount.

DELEGATE BLOUNT: I would like to point out just that the General Counsel has said that it is acceptable as drafted.

CHAIRPERSON FREEMAN: Thank you, Delegate Blount.
Did everybody hear that?

Delegate Schrag.

DELEGATE SCHRAG: I move an amendment to this section, to delete the words, "The legislature by a two-thirds vote of all members" and insert the word "law" so that the last sentence would read, "These rules may be changed by law."

DELEGATE CORN: Second.

[The motion is made and seconded.]

DELEGATE SCHRAG: The purpose of this amendment is that, as written by the committee, this rule gives extraordinary power to the courts which might be very much to the detriment of the public. For example, suppose the court passed

that said that there was a \$100 filing fee for a case. The only way the legislature could change that would be by a two-thirds vote.

Or suppose the court made a rule for its own convenience that said that everybody in the court had to be represented by a lawyer and no person could represent himself or herself?

We should not make it easy for the courts to make rules for their own convenience or what they think is the convenience of the public that would, in fact, be to the detriment of the public and the public representatives, the legislature, could not change by ordinary means of law.

I know of a case where this -- a problem like this actually occurred. In New York, the courts had a rule that made it very difficult for people to file a class action, to band together and accumulate small claims together and the legislature, by a narrow vote, overturned that and made it much easier for people to file class actions.

And I think that we should keep open the possibility of the people's representatives, the legislature, changing the court rule that acts to the detriment of the public.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: I would like to ask Delegate Schrag if perhaps he does not think that his amendment should be extended to require that the court's rules be approved by the legislature.

In other words, you are making them change them by law, as it were.

DELEGATE SCHIRAG: No, no. To do it with the court making the rules in the first instance, subject to a change by the legislature is far more traditional and makes far more sense because most of the rules that the court would pass are very ordinary, hum-drum rules necessary for court administration -- providing forms that have to be filled out and the legislature should not be bothered with such trivia that the courts have special expertise on.

DELEGATE KAMENY: Thank you.

DELEGATE FREEMAN: Delegate Long.

DELEGATE LONG: I would like to ask an opinion from the committee. It seems to be that you can look at two-thirds two ways. You can say that it unnecessarily protects the court. You can also say that it keeps the legislature from meddling in the court's affairs unnecessarily and I would like to know from the committee how they arrived at this two-thirds figure because I am uncertain as to which way to go on

this.

CHAIRPERSON FREEMAN: Would someone from the committee like to address that question? Delegate Blount.

DELEGATE BLOUNT: Well, actually, I would just say that I do not recall the discussion, how it went, but I am in favor of the amendment. I have no problem with the amendment. I just do not recall that discussion.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I was just wondering, in the section under Administration, did the committee give any consideration to the whole question of an equal opportunity stance for the court and under this section whether there would be guidelines for affirmative action on court distribution?

CHAIRPERSON FREEMAN: Delegate Shelton, right now we have an amendment on the floor. Once we have voted the amendment up or down I think your question would be in order.

Delegate Mason.

DELEGATE CHARLES MASON: I rise to support the Schrag Amendment and point out that by law it is clear what is meant. That is, the law would be passed in the same way that any other law would -- the law that would reject the court rule.

The previous language said two-thirds vote to

all members. It did not say laws. It could mean that the Governor did not have to sign it and that it could be only the legislature by itself by some kind of a resolution that passed by two-thirds but when we put in the word "law," it makes it clear that the process is the same as other laws.

Would the maker of the motion agree to that?

DELEGATE CORN: I call the question.

VOICE: You are out of order.

DELEGATE CHARLES MASON: Agree with my interpretation?

DELEGATE SCHRAG: I agree with you.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I call the question, please.

CHAIRPERSON FREEMAN: Is there a second?

[The question is called. There are several seconds.]

CHAIRPERSON FREEMAN: All those in favor of closing debate on the Schrag Amendment, please say aye.

[There is a chorus of ayes.]

CHAIRPERSON FREEMAN: All those opposed.

[Secretary Cooper says nay.]

[The motion passes.]

CHAIRPERSON FREEMAN: We have now closed debate

on the Schrag Amendment.

The Schrag Amendment on page 21, line 7, is to -- actually, starting on line 6 -- "These rules may be changed by law." And delete the end of the sentence.

All those in favor of adopting the amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition.]

Abstentions?

[No abstention. Carries unanimously.]

The amendment is adopted.

Delegate Shelton.

DELEGATE SHELTON: Yes, I would like some guidance from the committee as they know about the handling of discrimination cases in the courts in other states, whether or not it is the responsibility under this section, under the rule-making, to indicate that the court will be guided by equal opportunity provisions or whether this is how they are handled in other states.

This has been a very sticky point throughout the administration just as to how those work within the court system and how people will receive justice under the equal

opportunity laws. I just wondered whether or not the committee had any guidelines in that area for equal opportunity.

This might be an area for perhaps legal counsel.

DELEGATE BLOUNT: It is my personal opinion that it would be inappropriate in this section on the budget.

Are there comments from other members of the committee? They are welcome to speak to this.

CHAIRPERSON FREEMAN: Is there any member of the Judiciary Committee who would like to respond to Delegate Shelton?

DELEGATE THOMAS: Delegate Clarke and I were getting this article together. We assumed that the laws of the District of Columbia would apply to all agencies within this government and that is why we did not add anything to it.

But I agree with you, Delegate Shelton, there should be something said about it.

DELEGATE SHELTON: I would think that simply the inclusion in the record of this discussion would make it clear that there is a delegate that had some clear intention that there should be established some basis. I am not offering it as an amendment. I would just like for the record to be clear in that regard.

CHAIRPERSON FREEMAN: Thank you, Delegate Shelton.

Delegate Garner.

DELEGATE GARNER: I call the question.

[The question has been called.]

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE ROTHSCHILD: Point of order. Point of order. I don't think we have a quorum.

CHAIRPERSON FREEMAN: All right, Delegates, how many Delegates do we have in the room?

[Pause to count; 22 Delegates are present.]

DELEGATE GARNER: I call the question.

CHAIRPERSON FREEMAN: The question has already been called, and --

VOICE: Second.

[There is a second.]

CHAIRPERSON FREEMAN: -- seconded to close debate on Section 3.20. All those who are in favor of closing debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition. Passes unanimously.]

Debate is closed on 3.20. All those in favor of adopting Section 3.20 as amended, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition.]

Abstention.

[No abstention. Passes unanimously.]

We have adopted Section 3.20.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of
Section 3.21, the final section, State Judicial Advisory
Commission. State Judicial Advisory Commission.

VOICE: Second. Great.

[The motion is made and seconded.]

CHAIRPERSON FREEMAN: It has been moved and
seconded. Discussion? Delegate Moore.

DELEGATE BRIAN MOORE: Yes, I would like to amend
the motion to change three years to one year.

CHAIRPERSON FREEMAN: Which line are you on,
Delegate Moore?

DELEGATE BRIAN MOORE: Line 9. And secondly, I
would like to delete two persons from Governor, Legislature
and Bar and make them one person and add another line which
would be E) stating that four persons will be selected by the
D.C. Federation of Civic Associations.

DELEGATE CORN: I move an amendment to that.

[A motion is made.]

CHAIRPERSON FREEMAN: This has not been seconded.
Is there a second to this?

Is there a second?

Is there a second?

[There is no second.]

Delegate Moore, your amendment is defeated for
lack of a second.

DELEGATE BRIAN MOORE: Thank you.

DELEGATE CORN: Delegate Blount, could I have my
notes back, please?

CHAIRPERSON FREEMAN: Delegate Corn, you are out
of order.

Is there discussion on Section 3.21?

DELEGATE CORN: Yes.

CHAIRPERSON FREEMAN: Delegate Corn, you had
amendments to this section?

DELEGATE CORN: Yes, I have three amendments to
this section.

First of all, I would like to move that in A, B,
and C, "one" replace the word "two" and that a new section
E be included that would say "Three elected non-partisan."

"Three persons shall be elected non-partisan."

That is my first amendment.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

Is there a second? Is there a second?

Delegate Corn, your amendment is defeated for lack of a second.

DELEGATE CORN: May I make my second amendment, Madam Chair?

CHAIRPERSON FREEMAN: Yes, you may.

DELEGATE CORN: Okay, on page 22, starting with line 3 and going through line 6, I would move that you put a period after the word "state" and you delete the language as follows:

"To include the question of a housing court, neighborhood courts or other inferior courts and the use of arbitration without resort to the court." That all of that language be deleted.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE KAMENY: Second.

[There is a second.]

CHAIRPERSON FREEMAN: Discussion.

DELEGATE CORN: May I speak in favor of my motion?

CHAIRPERSON FREEMAN: Yes, you may, Delegate Corn.

DELEGATE CORN: Okay, the reason I would say that is two-fold. One, you are tying yourself to a specific list, housing courts, neighborhood courts, da-da da-da da-da, and you don't know that the needs of the state are going to be those in 100 years or others. There is no reason to give these examples.

Second of all, it would be much more logical to let those kinds of things be either established by the state or by law -- I mean, by the court or by law. There is no reason to put it in here.

CHAIRPERSON FREEMAN: Delegate Eichhorn.

DELEGATE EICHHORN: Putting it in here does not establish a housing court, neighborhood court or other inferior court. This simply creates an advisory commission which would recommend possibly such courts.

They would then have to be established by law and they could be abolished by law. They are not then in the Constitution. They are --

DELEGATE CORN: But you see --

CHAIRPERSON FREEMAN: Delegate Corn, you are out of order.

DELEGATE EICHHORN: -- enacted by law and they can be abolished by law. The reason for including these

specific courts is because members of the committee felt strongly that there was merit to a housing court and that there might be merits to neighborhood courts and we want persons appointed to this commission to be prepared to address those.

It also says, "Or other inferior courts." It is not limiting the scope of --

DELEGATE CORN: I know, but --

CHAIRPERSON FREEMAN: Delegate Corn.

Delegate Eichhorn, I am sorry.

DELEGATE EICHHORN: I think it is very important to be clear about the intent of this Commission in this language.

CHAIRPERSON FREEMAN: Delegate Bruning.

Delegate Bruning.

DELEGATE BRUNING: Yes, those courts were specifically mentioned to be investigated because they were, indeed, courts that many people raised very early in debate as to whether or not we were going to have a second or a third or a fourth tier of the courts. The questions of housing and neighborhood questions and disputes were very much the center of the question about an inferior court and so it is entirely sensible to make sure that those are addressed by the Commission that we form so I find great merit with this.

CHAIRPERSON FREEMAN: Delegate Thomas.

DELEGATE THOMAS: Madam President and Delegates:

We specifically put this article in because we were compromising with Brother Moore and we thought, by putting this article in and fighting to keep it in, that we would have kept the confusion off of the floor of this convention that we have witnessed the last four days but we saw that that did not happen.

I do hope that we will pass this as we have put it in there.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I would desire to see this section removed. It does seem to kind of clutter the language and I was wondering whether there was any thought given to a more broad address and broadening it, this particular section, rather than kind of making a kind of laundry list?

CHAIRPERSON FREEMAN: Would someone from the Judiciary Committee like to respond to that?

DELEGATE EICHHORN: Yes. I just want to suggest that Delegate Thomas was speaking for himself because I proposed this and it was not in response to Delegate Moore but out of a real interest in this and I would like to see a housing court in the District of Columbia without question.

I think there is merit to neighborhood courts. We were very interested in the use of arbitration without resort to the court. We did not feel, Delegate Shelton, that we had enough time to thoroughly research this and determine the structure of an inferior court system and yet we wanted to make sure that it was addressed in some depth.

So, establishing a commission for two years, that has a mandate to do this and to report to the people and the legislature, we felt was the way to ensure that what we could not do in 90 days would be done in two years.

CHAIRPERSON FREEMAN: Delegate Graham.

DELEGATE GRAHAM: I do think at this time that that laundry list is appropriate, as Delegate Shelton was saying; if it is listed there, maybe there will not be hesitancy on the part of those who are supposed to implement this in getting it started.

I like it to be spelled out in this particular place so that the people in the community can bring about some change if it does not occur.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I call the question, on the --

DELEGATE CORN: I would like to speak last, please.

DELEGATE GARNER: -- main motion.

DELEGATE SHELTON: Second.

[Question called and seconded.]

CHAIRPERSON FREEMAN: All those who are in favor of closing off debate on the Corn Amendment on 3.21 please say aye.

[There is a chorus of ayes.]

All those opposed.

[There are two nays.] [Motion passes.]

CHAIRPERSON FREEMAN: Debate is closed on the Corn Amendment.

DELEGATE GARNER: Point of order, Madam Chair.

CHAIRPERSON FREEMAN: Yes.

DELEGATE GARNER: I will not raise it at this point but at some point, would you rule as to whether makers of motions may speak both first and last or whether they may speak first or last? I have --

DELEGATE CORN: Point of order, Madam Chair.

DELEGATE GARNER: -- no objection -- I have no objection to Mrs. Corn speaking at this time but at some point, would you address that issue? At some point in time.

CHAIRPERSON FREEMAN: I did address that last night, Delegate Garner. Mainly what I said was that I think that at some point this body may want to consider limiting

the amount of time, especially if the maker of the motion speaks on both ends.

Delegate Corn.

DELEGATE CORN: Okay, the way my motion is worded,--

[Many loud side conversations.]

CHAIRPERSON FREEMAN: Delegates --

DELEGATE CORN: The way my motion is worded, the sentence in lines 2 and 3 will remain. "The Commission shall study the feasibility and desirability of the establishment of inferior courts in the state." Period.

I feel that that is enough. You do not have to spell out what this Commission -- what kind of lower courts this Commission will think about, whether they be housing courts or neighborhood courts, et cetera and whether or not you are telling them that they can use arbitration without last resort to a court or they cannot or they will have a chance of resorting to a court for a higher opinion.

I think this is not the kind of thing that goes into a constitution. All you need say is that this Commission will study the feasibility and desirability of the establishment of inferior courts in the state. That is clearly stated in line 2 and 3.

The language in line 4, 5 and 6 is unnecessary,

verbose, unconstitutional and belongs in legislation.

I urge you to vote to exclude lines 4, 5 and 6.

CHAIRPERSON FREEMAN: Delegates, all those who are in favor of the Corn Amendment to delete lines 4, 5 and 6, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a much louder chorus of opposition.]

Abstention.

[No abstentions. Amendment defeated.]

The amendment is defeated.

Further amendments? Delegate Cooper.

DELEGATE COOPER: I have several amendments to make.

DELEGATE CORN: I have two more. Madam Chair, I have two more.

CHAIRPERSON FREEMAN: Delegate Corn, you are out of order. I understand that you brought that up to the front.

DELEGATE COOPER: The amendments that I wish to propose are the following: On page 21, line 14, the first amendment. After the word "legislature," comma, "Who shall not be lawyers."

And the second amendment is on page 21, line 15,

to change the language that now says, "D.C." and replace it with the word "state."

[The motion is made.]

DELEGATE JORDAN: Could you go over that again, Delegate Cooper?

DELEGATE COOPER: Yes. [Repeats foregoing.]

DELEGATE BLOUNT: Madam Chairman --

CHAIRPERSON FREEMAN: Yes, Delegate Blount.

DELEGATE BLOUNT: Could the second amendment be addressed as a typographical error?

CHAIRPERSON FREEMAN: Yes. I was about to say that I think the second amendment this body can accept by acclamation. The second proposal for amendment, by consensus -- is it acceptable to this body that we change and add in line C there, 15 C, to read "By the Unified State Bar"?

If there are any objections, please say so.

[There are no objections. Amendment implemented.]

CHAIRPERSON FREEMAN: All right, that is accomplished. Is there a second to the Cooper Amendment to, on line 14, to read "Two persons appointed by the legislature who shall not be lawyers"?

[There is a second.]

CHAIRPERSON FREEMAN: Discussion. Delegate Graham.

DELEGATE GRAHAM: I agree. I think there should be some change. But what I am thinking now is, where it says, "Two persons," I think we can say "Two lay people" and leave off, "But who shall not be lawyers" because when we say "Who shall not be lawyers," we are putting it in the -- I think it sounds a little subjective.

But if we say "two lay people -- persons" then --

[Much cross-conversation at this time.]

CHAIRPERSON FREEMAN: Delegates, I am having a hard time hearing Delegate Graham.

DELEGATE GRAHAM: If we say "two lay persons," we know those people are not going to be lawyers because we are talking about lawyers right here in this area.

CHAIRPERSON FREEMAN: Thank you, Delegate Graham.

What I would like to know, Delegates, is whether you support or oppose the concept. I think that your suggestion, really, is a matter for Style and Drafting as to the best way to word the concept.

But do you support -- you were speaking in favor of the amendment.

DELEGATE GRAHAM: I favor the persons not being lawyers but I don't like the way it is stated.

CHAIRPERSON FREEMAN: Thank you. Is there further

discussion on this amendment?

Other Delegates, Delegate Cooper. Then you can speak to your own amendment.

Delegate Moore.

DELEGATE MOORE: I certainly support the idea of so many people on this committee, even though they are being brought on by the legislature and the executive. There is some control implied there but it is better than nothing and we do need laymen in there. We need the non-specialists and I would support the amendment.

CHAIRPERSON FREEMAN: Any further discussion?

Delegate Cooper.

DELEGATE COOPER: Yes. I do understand that what Delegate Graham set forth was not substantively different. However, I have to disagree with her. This section does not really speak to lawyers. If you read it, you will not find the word "lawyers" mentioned.

That is why I proposed the amendment I did, to make it consistent with the amendment that we put forth last night.

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I would like to offer -- what Delegate Cooper said, is it an amendment?

SEVERAL VOICES: Yes.

DELEGATE SHELTON: All right, can we offer a new amendment? Another amendment at this time?

SEVERAL VOICES: Yes.

DELEGATE SHELTON: All right, I would like to amend line 14 to say "Two non-lawyers appointed by the legislature."

[A motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

[There are several seconds.]

Discussion.

Delegate Mason.

DELEGATE CHARLES MASON: If we are going to specify that the ones appointed by the legislature must not be lawyers, it would seem to me that we -- in a corresponding way we would have to say some of the others will be lawyers.

It seems to me wrong to forbid lawyers in some seats and not require them in others. I had rather leave all the seats open, just as the original formulation of this section was. And leave it up to the appointing authority as to how many are or are not lawyers.

But if you are going to require that some seats not be lawyers, it seems to me that you have to require that

some others must be lawyers.

However, I oppose the amendment now before us.

CHAIRPERSON FREEMAN: Delegate Graham.

DELEGATE GRAHAM: Point of information. I am wondering if the State Bar would appoint two persons. Would they appoint two persons outside of the Bar?

DELEGATE CORN: No way.

[Several voices express it is unlikely prospect.]

CHAIRPERSON FREEMAN: Does the Judiciary Committee wish to respond to that?

DELEGATE EICHHORN: It is not likely.

DELEGATE THOMAS: They are unlikely to appoint a non-lawyer.

CHAIRPERSON FREEMAN: Is there any further discussion of the Shelton Amendment?

Delegate Cooper.

DELEGATE COOPER: I would like to speak in favor of the Shelton Amendment. It is not substantively different from what I put forth and not substantively different from Ms. Graham's comments and I think that that would be very clear. It is a good amendment and it serves the purpose. I would support it. It serves what we are trying to put forth here.

CHAIRPERSON FREEMAN: Thank you. All those who are in favor of adopting the Shelton Amendment, please say aye --

DELEGATE KAMENY: Please restate it.

CHAIRPERSON FREEMAN: It reads, "Two non-lawyers appointed by the legislature," on line --

DELEGATE CORN: Point of information.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: Does that assume that two are appointed by the Governor and two are appointed by the Bar and one appointed by the Chief Justice shall in fact all be lawyers?

MANY VOICES: No.

CHAIRPERSON FREEMAN: You have to read it as to what it says. It does not say anything one way or the other. This addresses only the legislature.

DELEGATE CORN: Okay.

CHAIRPERSON FREEMAN: All those in favor of the Shelton Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There are a few opposed.]

Abstentions.

[No abstentions. Amendment passes.]

CHAIRPERSON FREEMAN: The amendment passes. And this amendment really, in effect, is a substitute to the amendment for the Cooper Amendment, so we are back to the main motion on the floor, which is the adoption of 3.21.

Delegate Mason.

DELEGATE CHARLES MASON: I move that paragraph C be amended to read, "Two members of the Bar appointed by the Unified State Bar."

[Motion made and seconded.]

CHAIRPERSON FREEMAN: Discussion. Is there any discussion on this?

[Response it was not heard. Proposed amendment is repeated by the Chair.]

If there is no discussion, shall we vote?

All those in favor of adopting the Mason Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed. Abstentions.

[No opposition, no abstention, passed unanimously.]

The amendment is adopted.

Delegate Corn.

DELEGATE CORN: I move -- I have two amendments

but they can be incorporated into one amendment.

On page 22, lines 4 and 5 and then at the end of line 6 and the amendment would be as follows:

Delete the words on lines 4 and 5 "neighborhood courts or" and at the end of line 6 add the sentence, "There shall be no neighborhood courts." Period.

[Several voices; We already heard that.

We already voted that down, You said that before.]

CHAIRPERSON FREEMAN: Delegate Corn, I think that is a reconsideration of the question that we have just voted on.

DELEGATE CORN: No, no. No, it is not. The question of whether or not there shall be neighborhood courts has never fully been dealt with and I think now is the time. I would like to bring this question to the body.

[The motion is made.]

CHAIRPERSON FREEMAN: All right, is there a second to that? [Second called for three times. No second.]

Gloria, the amendment dies for lack of a second.

Delegate Shelton.

[Totally inaudible owing to cross-talk.]

CHAIRPERSON FREEMAN: Delegates, I cannot hear Delegate Shelton.

DELEGATE SHELTON: [Continues without repeating]

3.21, line 13, "Two lay persons shall be appointed by the Governor."

[A motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

DELEGATE SIMMONS: Second.

[There is a second.]

CHAIRPERSON FREEMAN: Discussion.

SPEAKER: I move the previous question, Madam Chairman.

CHAIRPERSON FREEMAN: No. Now, is everyone aware of the amendment that is now on the floor?

SEVERAL VOICES: No.

CHAIRPERSON FREEMAN: Which is line 13 on page 21 [repeats amendment.] Is there discussion on that?

Delegate Eichhorn.

DELEGATE EICHHORN: I would wonder why you are using lay persons should be appointed rather than non-lawyers?

DELEGATE SHELTON: I would like to insist on that. Thank you very much. [Inaudible.]

CHAIRPERSON FREEMAN: All right. Delegate Mason.

DELEGATE CHARLES MASON: I am rising to raise the same point that Delegate Eichhorn rose to raise. I will simply say that I oppose this amendment.

CHAIRPERSON FREEMAN: Delegate Bruning.

DELEGATE BRUNING: Yes. Specifically, the indication is that the majority of non-lawyers would be making up the Commission. And I guess right now I don't want to hear any more discussion on that point.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: Yes, I rise to oppose the amendment because I feel that this --

[Continuing conversations by delegates.]

CHAIRPERSON FREEMAN: Delegate Kameny, even though your voice carries very far, with all the other delegates speaking, it is hard for me to hear. Thank you.

DELEGATE KAMENY: I rise to oppose this amendment because I feel that this is a commission which in fact ought to be heavily weighted in favor of lawyers among its membership. Look at what it is supposed to be doing. It is supposed to be evaluating the whole bottom end of our judicial process which will require a great deal of applied knowledge about the law and how it functions in courts and the courts and how they function.

I think we need lawyers on this, given especially the change in part B, that those appointed by the state legislature must be non-lawyers. I think we make a mistake, further,

to limit the number of lawyers on this commission. If anything, we should be raising them -- raising the number of lawyers on this commission. So I urge that this amendment be defeated.

Thank you.

CHAIRPERSON FREEMAN: Is there further discussion on the amendment? Delegate Jones.

DELEGATE JONES: You know, one of the groups that has been absent in this whole thing is the para-legal community and I think that if we are going to appoint lawyers, we ought to appoint them and Delegate Shelton, if I could get you to change to say that two para-legal persons would be appointed by the Governor?

DELEGATE SHELTON: Madam Chairman, if I may answer that, I think that as far as the legal profession is concerned, that they would consider those to be not lawyers. I mean, that is the technical term for anyone who is not a member of the D.C. Bar is considered by -- I mean, who is not certified by the profession is considered a non-lawyer so that my statement therefore would embrace the possibility of such a person.

I am not here to evaluate whether that is a technical term for a lawyer or not. I stand here to be corrected by the lawyers if I need to be.

CHAIRPERSON FREEMAN: Is there further discussion

on the Shelton Amendment?

The Shelton Amendment, which we are about to vote on, would change line 13 on page 21 to read "Two non-lawyers appointed by the Governor."

[Much cross-conversation.]

Delegates, [rapping gavel] All those who are in favor of adopting the Shelton Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a chorus of opposition.]

Abstentions. [No abstentions.]

The amendment is defeated.

DELEGATE BLOUNT: Madam Chairman.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: I call the previous question.

[Previous question called and seconded.]

[Several persons demand attention of the Chair.]

CHAIRPERSON FREEMAN: I just this very moment received a motion, if we are willing to consider another motion. It is an amendment to Section 3.21.

Delegate Eichhorn,

DELEGATE EICHHORN: I made an assumption that the legislature in its wisdom would fund this Commission but so

many people have asked me about it that --

CHAIRPERSON FREEMAN: Delegates, can I have quiet in the Convention Hall? Delegate Eichhorn has the floor.

DELEGATE EICHHORN: -- that it may -- I decided that it makes sense to use that provision and to allow for some compensation so I -- I have a copy of the amendment.

It is just to add at the end, "The legislature shall provide funding for the operations of the commission and compensation for its members by law."

[The motion is made.]

CHAIRPERSON FREEMAN: Is there discussion?

[No discussion and no second.]

CHAIRPERSON FREEMAN: Delegate Eichhorn, could you submit that to the Secretary, please?

Is there any discussion on the Eichhorn amendment?

I am going to ask Delegate Cooper to please read the amendment to the body so we can vote on it. This would be, as I understand it, after the last word on line 9 on page 22. Delegate Cooper.

DELEGATE COOPER: The amendment would read.

[Reads amendment as proposed above.]

CHAIRPERSON FREEMAN: All those who are in favor of adopting the Eichhorn Amendment, please say aye.

[There is a chorus of ayes.]

Opposed.

[There is a chorus of opposition.]

Abstention.

[No abstention. Motion carries.]

It is adopted. Delegate Love.

DELEGATE LOVE: Madam Chairman, is debate on the proposal or has somebody else got amendments?

I want to speak against this proposal after it has been amended.

CHAIRPERSON FREEMAN: Are there any further amendments? Amendments to Section 3.21.

Did you have an amendment to your section, Delegate Blount?

DELEGATE BLOUNT: I wanted to move the previous question with the understanding that he [Delegate Love] would be the last speaker before we vote.

[The previous question is moved.]

CHAIRPERSON FREEMAN: Fine. Thank you. Delegate Love.

DELEGATE LOVE: Fellow Delegates, I would like to urge you to vote against this proposal. My feeling is, since I was one of the people that brought to the committee

in the beginning the concept of the neighborhood court, that the idea is very good. I feel this is not constitutional language. I feel that the committee, as Frank Kameny would say, if they wanted something in the constitution, should have put it in. What they have done is to set up a commission that will disappear 50 years from now and when somebody reads this document, they will get to this and say, "What is this all about?"

I think the idea is good. I support it. I was one of the people who initiated it in the committee. But I feel this final provision is not appropriate. I think we have a good section here. I think we have a very good section. I think the rest of it reads pretty well.

I think we have done a very good job. I think this final provision sticks out. And in terms of having a constitution which is lean and to the point and does not have extraneous matter, I would urge you to vote against this whole provision. Thank you.

CHAIRPERSON FREEMAN: Delegate Blount -- I cannot hear you, Delegate Blount. Are you moving the previous question?

DELEGATE BLOUNT: That has already been done. I just was moving to close debate.

CHAIRPERSON FREEMAN: Is there a second to that?
There was a second to that, yes.

[Motion made and seconded.]

CHAIRPERSON FREEMAN: It has been moved and seconded to close debate on Section 3.21. All those in favor of closing debate, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition. Passes unanimously.]

Debate on Section 3.21 is closed. All those in favor of adopting Section --

DELEGATE LONG: Point of order.

CHAIRPERSON FREEMAN: Delegate Long.

DELEGATE LONG: I wish to be the second speaker against this section. The Section 3.1, which we have already passed --

SEVERAL VOICES: Point of order --

CROSS-CONVERSATION: [General gist is that it is inappropriate to speak in opposition now.]

DELEGATE LONG: Section 3.1, which we have already passed, provides for courts that may from time to time be established by law. The legislature is fully empowered to examine the inferior courts -- and I left out a word in my

quote -- as they may wish. So there is no real, pressing need for us to direct the legislature or anybody else to undertake a study.

And I agree on the basic principle that this document should be as uncluttered as ever possible to delete this section.

CHAIRPERSON FREEMAN: Delegates, the question now before us is the motion to adopt Section 3.21. All those in favor of adopting 3.21, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a chorus of opposition.]

[Division is called for and implemented.]

[Counting of hands, much discussion from the floor.]

[Announcement is made the motion loses, much argument, particularly by Delegate Corn.]

[First person to be recognized by the Chair is:]

DELEGATE SHELTON: I am afraid, Madam Chair, that I feel that that was not an accurate count and I would therefore like to have a recount.

[There is a recount.]

SECRETARY COOPER: Nine in favor. Twelve opposed. Two abstain.

DELEGATE GARNER: Point of order, Madam Chair, this is not a quorum.

[Further discussion. It is decided there is a quorum.]

CHAIRPERSON FREEMAN: I should like to announce the final result on that. There are nine who voted in favor of adopting Section 3.21, twelve who were opposed and two who actually raised their hand to abstain. There may have been others who did not vote. That is proper.

Delegate Kameny. Excuse me, that means that Section 3.21 is not adopted.

DELEGATE KAMENY: Madam Chairperson, I move an amendment by way of addition of a brief section 3.22.

I'm sorry -- 3.21. This is taken essentially from the Federal Constitution and represents an important protection. It will read, if adopted and as proposed:

"The salary and benefits of a judge or a justice may not be reduced during her or his term of office."

VOICE: Second.

[The motion is made and seconded.]

DELEGATE KAMENY: This has been a basic protection in the Federal Constitution and I think it is important. That is political protection.

CHAIRPERSON FREEMAN: It has been moved and seconded to adopt a new section 3.21 that would read [repeats].

Is there discussion on that amendment?

Delegate Love.

DELEGATE LOVE: I would like to speak against the motion. It appears to me that all of our government employees, whether they be judges or governors or legislators, if we cannot afford to pay them the salaries that we have been giving them then they should take a salary cut.

And frankly, I think that given what is happening, they get richer and we get poorer, that is the very reason that I opposed having more judges and I want fewer judges so I would also oppose this.

CHAIRPERSON FREEMAN: Excuse me, Delegate Love.

Could we have quiet on the floor? Only one delegate has the floor. Delegate Love.

DELEGATE LOVE: I am finished.

CHAIRPERSON FREEMAN: Delegate Jones.

Delegates, may we please have order?

DELEGATE JONES: Yes, I would like to speak against the motion. And the reason that I speak --

Mr. Cooper and Mr. Kameny --

The reason that I speak against the motion is

because it seems to me that each and every person employed by the state would be under its merit personnel system, including the judges and would also come under the rules and regulations of that merit system and that would be the protection.

If you are going to protect the judges, why aren't you going to protect the street sweepers and say the same thing about them? Who is first among equals?

DELEGATE CORN: Good point. Good point.

CHAIRPERSON FREEMAN: Delegate Bruning.

DELEGATE BRUNING: I would like to speak strongly in favor of the motion. Although, indeed, it would be nice, maybe in times of recession, to cut wages and benefits, the simple fact of the matter is that the courts should be, at least in this regard, independent and that we open ourselves very much to in effect the possibility of crippling^{by} our legislature if it is unsatisfied with the performance of the courts.

For example, if a particular pet idea of the legislature is overturned as unconstitutional and then the judges of this state have the possibility of having their salaries and benefits cut in retribution, I think it would cause some quaking and some loss of independence.

That is why we don't allow the reduction and that

is also why we don't allow, for example, in terms of governors for our legislators to increase their salaries -- so we should never decrease their salaries.

If you do not change their salaries during their term, it is essentially to protect the judiciary and so this has been proposed and I strongly speak in favor of it.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: Madam President, I rise to point out that in the executive branch salaries, we have indicated there that that would be true for the governor, the principal department heads and for appointees and --

DELEGATE CORN: [Overriding] Point of order, Madam Chair, that --

CHAIRPERSON FREEMAN: Delegate Corn --

DELEGATE CORN: [Overriding]--is not relevant.

CHAIRPERSON FREEMAN: It is totally relevant.

She is speaking as to what she believes ought to be done and she is informing the body as to what is going on in the other committees.

DELEGATE SIMMONS: I am saying that this is, therefore, consistent with what we are asking regarding other persons in the state government and I would support the motion for the simple reason that I do not think that judges should

sacrifice and I think they should be governed as others.

CHAIRPERSON FREEMAN: Delegate Moore.

DELEGATE BRIAN MOORE: Yes. I would like to speak in favor of the motion. I concur with Richard Bruning that it is extremely important to preserve the independence of the judicial system and the only way to separate them from the executives and the legislature and the pressures of that body is to protect their salaries.

So I would urge you to support the motion on the floor in securing protection of salaries of justices.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: I call the question.

[The question is called.]

CHAIRPERSON FREEMAN: Is there a second? The previous question has been called.

[There is a second.]

All those who are in favor of closing off debate on the Kameny Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[No opposition. Debate is closed.]

Debate is now closed on the Kameny Amendment, which would be a Section 3.21 and reads as follows:

"Salary and benefits of a judge or justice may not be reduced during her or his term of office."

All those who are in favor of adopting the amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is a small chorus of opposition.]

Abstention.

[No abstention. Motion carries.]

The motion carries. Delegate Corn.

Delegate Corn. Did you have an amendment?

DELEGATE CORN: [Speaking from doorway. Inaudible.]

CHAIRPERSON FREEMAN: Delegate Corn, we have not yet adopted the judiciary article. You left me a note that you had a new section 3.2 --

DELEGATE CORN: [Overriding] No, that was covered already. I wanted to see that there would be no neighborhood courts that --

CHAIRPERSON FREEMAN: Thank you. Thank you.
Delegate Blount.

DELEGATE BLOUNT: I move the adoption of the entire Judiciary Article and move the --

[Throughout motion, Delegate Corn talking loudly.]

CHAIRPERSON FREEMAN: Delegate Corn --

DELEGATE BLOUNT: -- I would just like to move --
if I can get the delegates to give me a few seconds of their
attention -- the section and to thank the Chair for an out-
standing job --

[Applause]

-- and to thank the delegates for the way that
they conducted themselves tonight and hope that it will carry
over into the other committees' work.

[Applause]

[The motion is made. There is a second.]

DELEGATE SIMMONS: Madam Chair, I rise to say
that I think the motion and the business of the convention,
those two should be separated. And I would like to entreat
Delegate Blount to do that.

VOICE: Let's just get on with the motion on the
floor so we can get out of here.

CHAIRPERSON FREEMAN: All right, it has been
moved and seconded to adopt the Judiciary Articles. Is there
discussion on that?

Delegate Long.

SEVERAL VOICES: As amended.

DELEGATE LONG: As amended.

CHAIRPERSON FREEMAN: Delegate Rothschild.

DELEGATE ROTHSCHILD: We have spent many hours and many days working on this article and there has been a tremendous effort to do it.

However, I have certain doubts about some of the things in it so at this point, I would like to move that the Article on the Judiciary be referred back to the Judiciary Committee for further study.

[Motion to refer is made.]

CHAIRPERSON FREEMAN: Is there a second?

[There are several seconds.]

DELEGATE ROTHSCHILD: Okay, I would like to explain why. This afternoon -- I have been concerned about many aspects of the article and that it may not be workable. This afternoon I spoke with Aus Davis, who was the former clerk of the D.C. Court of Appeals for 10 years. He is now the clerk of the U.S. Supreme Court. I spoke to him for an hour on the phone and I described to him the system that we have designed.

I described to him the nine judges on the Supreme Court that sit en banc and the second layer of the Superior Court.

He said to me -- or I asked him -- what his opinion was and he said to me, that it is not a workable system. He says, the way we have set it up, it cannot handle the case

for appeals that would be a result of this.

I said, would it be accurate to characterize what we have done as building a ship that won't float?

He said yes. He said that the system we have now, with the D.C. Court of Appeals, where it can sit in panels of three, is difficult, where they can sit in three panels of three. He says the case load --

DELEGATE SHELTON: Point of order, point of order.

DELEGATE ROTHSCHILD: He says the case load there is --

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: It appears that the Delegate is rehashing the discussion and is not speaking to the motion.

DELEGATE ROTHSCHILD: I am speaking to the article that we have just composed.

CHAIRPERSON FREEMAN: But Delegate Rothschild, you have to speak to the motion that is the motion to --

DELEGATE SHELTON: [Simultaneous with Chair, inaudible] [Negates speaker throughout this interchange.]

DELEGATE ROTHSCHILD: Well, I am explaining that it has to be referred back to the committee. I made that motion and I am giving my reasons.

DELEGATE SHELTON: [Still speaking] That informatio

is third-party information and --

DELEGATE CORN: Rothschild has the floor.

MANY VOICES: [Instruct Ms. Corn to be quiet.]

MANY VOICES: Point of order. Point of privilege.

CHAIRPERSON FREEMAN: Delegates [rapping gavel]

May I hear one voice at a time, please? Delegate Lockridge.

DELEGATE LOCKRIDGE: Madam Chair, would you please use your authority as Chair to retain Ms. Corn, please?

DELEGATE CORN: Restrain.

DELEGATE LOCKRIDGE: Refrain or contain or whatever pertains, so that we can get on with the business at hand.

CHAIRPERSON FREEMAN: Delegate Corn, there is a motion on the floor and the maker of the motion is speaking to it.

I would also like to ask the delegates to assist the Chair in the task of maintaining order.

DELEGATE LOCKRIDGE: What would you like me to do? Just tell me what to do.

[Laughter and side comments.]

CHAIRPERSON FREEMAN: Thank you, Delegate Lockridge
Delegate Rothschild.

DELEGATE GARNER: Point of order.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE ROTHSCHILD: I don't believe -- can a point of order interrupt the speaker?

SEVERAL VOICES: Yes.

DELEGATE GARNER: It was my understanding that this article was adopted and moved and adopted ad seriatim. That is, each section was moved ahead of time and adopted. This body attempted to reconsider one of those motions and that was considered out of order.

It is my understanding of ad seriatim proper that at the end of considering sections, you do not need and in fact, is it not improper to consider the whole article and that Mr. Rothschild's motion is out of order.

DELEGATE ROTHSCHILD: I am speaking to a different article and --

DELEGATE GARNER: I am asking for a ruling from the Chair on the meaning of the word ad seriatim and the Chair may wish to add an opinion. I do not know what the answer is to this but I believe that the correct procedure is, we considered each section and when we get to the last section, we do not need to consider the entire article at hand.

DELEGATE CORN: As a whole.

DELEGATE GARNER: That is my point of order and I would request that the Chair -- perhaps after considering

some opinions -- rule on that issue.

DELEGATE CORN: Point of order.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: It seems to me very clear, when something is considered ad seriatim, one section at a time, even if each section be adopted, that does not mean that the entirety, the whole, is adopted.

Especially since a quorum, the members of the delegation that make up a quorum every night, seems to change so drastically. Therefore, it is only reasonable to assume that even if an article were accepted ad seriatim, it must be voted on now as a whole, as an entire unit.

And therefore, Delegates, Rothschild's motion is, in fact, in order.

CHAIRPERSON FREEMAN: I have a ruling on this.

The motion itself is out of order. What Delegate Rothschild would like to accomplish is accomplished by voting the entire article down. If the entire article is voted down, then it will end up going back to committee.

So, Delegate Rothschild, you may speak to the main motion on the floor but your motion is out of order. The main motion on the floor is to adopt the Judiciary Article.

DELEGATE ROTHSCHILD: Yes, but the main motion

says "Refer an issue to a committee" and that can apply to the main motion.

DELEGATE SIMMONS: Madam President.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: I submit that the desire of Delegate Rothschild can be achieved at the time of the second making. It does not necessitate voting the article down. This could be an amendment provided it was two-thirds at the time of the second reading.

DELEGATE ROTHSCHILD: Madam Chair, I am trying to speak --

CHAIRPERSON FREEMAN: Delegate Shelton.

DELEGATE SHELTON: I would like to make a request of the delegate as a comment that I would be greatly impressed by his own opinion with respect to the article but it is not necessary for him to go into a lot of extraneous detail to indicate to us third-party conversations for which we really do not have the full benefit [of having heard] so we are impressed by our own experience and it is not necessary for him to include all the reference to a conversation that he had.

CHAIRPERSON FREEMAN: I would suggest to the Delegates that we let Delegate Rothschild finish whatever time he has left in his five minutes and then we can take a vote.

DELEGATE JORDAN: Point of information.

CHAIRPERSON FREEMAN: Delegate Jordan.

DELEGATE JORDAN: I mean, point of order, Madam
Chair --

CHAIRPERSON FREEMAN: Yes.

DELEGATE JORDAN: Madam Chair, as I understand
this motion, it says either to refer a question back to a com-
mittee for some consideration or refer a new matter to a
committee.

CHAIRPERSON FREEMAN: Delegate Jordan, I have
ruled the original Rothschild motion out of order. What the
motion on the floor is, is to adopt the Judiciary Article and
that is what Delegate Rothschild is speaking to.

DELEGATE JORDAN: Okay.

DELEGATE KAMENY: And then we vote on the article.

DELEGATE ROTHSCCHILD: Okay, well, then, I am not
in favor of adopting it for the following reasons.

The system that we have structured, basically,
is not workable. It could not handle the case load. Also,
in conversations which I had, it was described to me that it
would be possible to structure a system with five Supreme
[sic]
Court justices and a seven-court or some other court, court of
appeals -- that we should have another layer.

Also, it was explained to me that in a two-tier system, generally the appeals part, the second tier is through certiorari. In other words, the upper tier can refuse to accept the appeals of the lower tier and thereby control the case load that goes up.

We, supposedly and hopefully, are creating a system where we have a right to appeal from our lower court to our upper court, which is rather easy.

Now, what I am suggesting and the reason I think we should turn this down or reject it is several things. And some of these things I am going to ask our counsel to speak to because they are included in a report which our counsel, Ralph Thomas, has spoken to.

One, we have not guaranteed ourselves the right to appeal to our Supreme Court. In Mr. Thomas' -- in Mr. --

[Much side conversation.]

CHAIRPERSON FREEMAN: Delegates, could you please be quiet? Delegate Rothschild has the floor.

DELEGATE ROTHSCILD: In Mr. Thomas' report, he says "The Delegates may want to elaborate upon the jurisdiction of the Supreme Court in order to guarantee the constitutionality of the right to appeal in certain instances."

What I am afraid we have done if we do not

include that right, is we may have created a system where, by virtue of the fact that it cannot handle the number of appeals, they may try to say that you do not have the right to appeal later on.

Further on, in our Counsel's report -- which I am going to elaborate to it -- it says, "It is strongly urged -- and he is referring to Section 3.5, the Composition of the Supreme Court. He says, "It is strongly urged that these provisions receive further attention or study since the provision as drafted appears to pose immediate and possibly serious practical problems."

The most obvious problem posed is the volume in court backlog.

Another person I spoke to, a lawyer, who worked with a judge -- who was clerk to a judge at the Court of Appeals said, "It may very well be difficult to find justices to serve on our Supreme Court. They may not want to deal with that case load for that type of a salary."

So, due to these problems, and the fact that I really think that they should be looked at more closely, and the fact that I am afraid we have created a judicial bottleneck by our system, I would really appreciate your rejecting this article and having it further studied. Thank you.

CHAIRPERSON FREEMAN: Thank you.

DELEGATE ROTHSCHILD: Oh, I would like Counsel to speak to some of the issues.

CHAIRPERSON FREEMAN: No, that is out of order, Delegate Rothschild.

DELEGATE ROTHSCHILD: Well, can he speak to it at some point?

CHAIRPERSON FREEMAN: Yes. The Counsel has spoken to the entire article and I am sure he will be in direct consultation with the committee and the delegation as a whole.

DELEGATE ROTHSCHILD: But he cannot speak -- he cannot speak to it now?

CHAIRPERSON FREEMAN: We have a motion on the floor right now which is to adopt the article.

DELEGATE ROTHSCHILD: Well, can't he speak to the whole article?

DELEGATE : Point of order. [Several Delegates

CHAIRPERSON FREEMAN: All right, I am going to take points of order. Let's see them. Delegate Schrag.

DELEGATE SCHRAG: Well, I wish to speak for the article. I'll defer.

CHAIRPERSON FREEMAN: Okay, thank you. Delegate Moore.

DELEGATE BRIAN MOORE: Yes. I question your decision about not allowing Counsel to interpret the question of Delegate Rothschild. Can you give us a reason for that?

CHAIRPERSON FREEMAN: I thought that the Counsel addressed each section of the Article as we have gone along and he has submitted an entire explanation which all the Delegates have received and it was used in our consideration of the Article.

DELEGATE BRIAN MOORE: Why can't he give us his judgment on the whole Article as it has been moved right now?

DELEGATE CHARLES MASON: You do not debate the Chair.

DELEGATE BRIAN MOORE: Then I want to appeal --

CHAIRPERSON FREEMAN: Do you want to appeal the chair, Delegate Moore?

DELEGATE BRIAN MOORE: Yes, I do.

CHAIRPERSON FREEMAN: All right.

VOICE: I second the appeal.

CHAIRPERSON FREEMAN: As I said, the reason why I have ruled the request to consult with the lawyer at this point out of order is that the lawyer has been consulted. He distributed to all the Delegates a point-by-point explanation of each section of the Article and as we have gone along, we

have changed sections of the Article from what it was proposed to us by the Judiciary. We have consulted with Mr. Thomas.

I do think that whatever the entire Article says at this point, we can, in time for our second reading, go over the entire Article in consultation with the committee and advise the Convention.

Okay, now --

DELEGATE ROTHSCHILD: I am allowed to speak to that and --

MANY VOICES: No, you are not.

ACTING CHAIRPERSON JONES: You are out of order, Delegate Rothschild.

DELEGATE ROTHSCHILD: I have a right to speak to that.

ACTING CHAIRPERSON JONES: You are out of order, Delegate Rothschild.

DELEGATE ROTHSCHILD: I insist I have the right to speak now and --

ACTING CHAIRPERSON JONES: No, you are out of order. I am now the Chair and --

DELEGATE ROTHSCHILD: I have the right --

A.C. JONES: I am sorry, you are out of order. I am now the Chair. Delegate Moore.

DELEGATE ROTHSCHILD: I appeal the ruling of the Chair.

A.C. JONES: You can't appeal that because we are in the process of appeal and the way that the appeal works is that when you appeal the ruling of the Chair, the Chair has the right to state their defense and we vote.

DELEGATE KAMENY: And then we vote, right.

DELEGATE ROTHSCHILD: But I have the right --

DELEGATE CORN: And then we vote.

DELEGATE BRIAN MOORE: That is not right. That is

SEVERAL VOICES: Brian -- Brian --

A.C. JONES: Brian, wait a minute -- he has already stated that he appeals the Chair. The Chair has the right to the defense and we vote. What is the problem here?

DELEGATE BRIAN MOORE: [Overridden by side talk.]

[Continues to protest.]

DELEGATE CORN: Brian, Teresa is right.

DELEGATE LONG: Point of order. Point of order.

A.C. JONES: Not at this point, he does not. We went through the same process last night and now we are back into the same process again. I am going to recognize your point of order in a minute, Wes. But the process that we have consistently followed is, if you appeal the Chair, the

Chair has the right to defend themselves and we take the vote.

Now, I am going to recognize Wes' point of order and then we are going to vote. Delegate Long.

DELEGATE LONG: The process of appeal is outlined in the Rules and when you appeal the ruling of the Chair, the Chair makes a statement. Then the person appealing the Chair makes a statement. The Chair closes and then it comes to a vote. One, two three.

DELEGATE SHELTON: We have done that.

A.C. JONES: Go ahead, Delegate Moore.

DELEGATE BRIAN MOORE: Ms. Freeman is correct about the Counsel expressing his opinion on each article as we have gone along here. However, I am concerned about the new information that has been brought to the Floor by Delegate Rothschild and I would hope that we could get Counsel's reaction and response to what Delegate Rothschild --

A.C. JONES: Excuse me, Delegate Rothschild and Delegate Kameny, please.

DELEGATE B. MOORE: And that is why I would like the Counsel's opinion as to the new information brought to us.

A.C. JONES: Okay, we are going to call for the vote. If you sustain the Chair, you will answer yes.

DELEGATE CORN: Quorum call.

[There is a quorum count, a division of the vote, a counting of hands, a good many side comments and the Chair is sustained.]

A.C. JONES: The Chair is sustained so we will go forward.

CHAIRPERSON FREEMAN: Thank you. Delegate Rothschild I think that the Counsel will go over the entire article, now that we are about to adopt it -- I think -- and we will get an opinion from him in time for our second reading and I am sure he will also advise the Judiciary Committee.

DELEGATE ROTHSCILD: Why do we pay Counsel if we can't have his opinion when we call for it?

DELEGATE COATES: Let's vote. Let's vote.

DELEGATE ROTHSCILD: Weird, weird, weird.

CHAIRPERSON FREEMAN: The motion on the Floor is to adopt the entire Article.

DELEGATE LOVE: I call the question.

[The question is called.]

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: I just want to take 15 seconds to say for the record, because of what Delegate Rothschild said, that should a case load problem appear, we have ample means in the Constitution now to deal with that because we

have allowed the Legislature to establish inferior courts and we have allowed the Legislature to increase the jurisdiction of the Superior Court so if a case load problem appears, the Legislature could create additional courts and permit an appeal to the Superior Court and take some of the burden off the Supreme Court. So I favor the Article.

DELEGATE SIMMONS: Madam President.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: I would like to vote to simply say a word of felicitation, I suppose, to the Chair of the Judiciary and the Committee. I think that it is --

[Loud applause.]

DELEGATE KAMENY: Let's vote first, then felicitate.

DELEGATE SIMMONS: I would like to say -- I would like to say -- oh, you want to vote first?

MANY VOICES: Yes, yes, yes.

DELEGATE CORN: Madam Chair.

DELEGATE KAMENY: Please don't --

DELEGATE CORN: Madam Chair, let me speak against it.

VOICE: For God's sake, let's vote.

DELEGATE LOVE: Second.

DELEGATE CORN: Madam Chair, point of order, have there been two for and two against?

MANY VOICES: Side comments protesting D. Corn.

DELEGATE CORN: I would like to speak against the motion to adopt the Article.

VOICE: Why do we need to hear from you now.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: I rise to speak against this Article. No where else in the United States in any other state in the Union is the Superior Court becoming Appellate Court and now --

VOICE: Point of personal privilege. That is extremely painful to my ears.

CHAIRPERSON FREEMAN: Delegate Corn, could you please speak softly?

DELEGATE KAMENY: That is a unique and special heritage from the Preamble.

[Total chaos. Not transcribable.]

CHAIRPERSON FREEMAN: [Rapping gavel.] Delegates, one person has the Floor right now. That is Delegate Corn.

Would you please come up to the front of the Convention Hall, Delegate Corn, and address the body and do not scream.

DELEGATE SIMMONS: Point of information.

CHAIRPERSON FREEMAN: Delegate Simmons.

DELEGATE SIMMONS: I would like to entreat
Delegate Corn to accurate and factual as well as emotional.

DELEGATE SHELTON: Point of information --

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: I submit to this body that I
would like to know of any other state in the Union in which
the Superior Court in effect becomes the Appellate Court.
That is what we have created here.

Delegate Schrag is absolutely correct --

DELEGATE SCHRAG: New York.

CHAIRPERSON FREEMAN: Delegate Schrag, you are
out of order.

DELEGATE CORN: That is not true.

CHAIRPERSON FREEMAN: Delegate Corn, would you
please address the body or I am going to rule you permanently
out of order on your --

DELEGATE KAMENY: So New York doesn't have a
Supreme Court. So what?

CHAIRPERSON FREEMAN: Delegate Kameny --

DELEGATE SHELTON: You are out of order, Kameny.

CHAIRPERSON FREEMAN: [Rapping gavel] Delegates.

Delegate Corn.

DELEGATE CORN: Delegate Schrag is absolutely right. If you adopt this article, then, in fact, the legislature can set up lower courts, inferior courts to the Superior Court. [Speaking against continuing side comments.]

However, in normal circumstances, in normal, regular states, you always have the Superior Court is the first court, the Appellate Court is where you can go for appeal. It does not work where the Superior Court is the Court of Appeals and that is what we will be setting up if you adopt this article.

I urge you to vote it down, let it go back to Committee and let them come back with a three-court tier system so that we will not have an overload of our court system, so that when you file a law suit, you will not be waiting for nine months to a year and a half for a case to be heard, and where the judges --

DELEGATE NIXON: Thank you.

DELEGATE CORN: Do you mind?

DELEGATE THOMAS: Yes.

[Laughter.]

CHAIRPERSON FREEMAN: Delegates, please.

DELEGATE CORN: Where judges will not be

overworked and where everyone will have a fair hearing and a proper chance for a proper appeal before a court, not where your case gets heard -- not in the Rental Accommodations Office or some other hearing office where the hearing examiner is a lawyer right out of law school and is just passing the Bar and the Supreme Court and Superior Court in effect becomes the Court of Appeals.

I urge you to vote this down. It is impractical and unworkable and it does not give you the fair time for an appeal.

MANY VOICES: Your two minutes is up.

VOICES: Call the question.

CHAIRPERSON FREEMAN: Delegate Corn, your time is up. Delegate Kameny.

DELEGATE KAMENY: I call the previous question.

[Question is called. There are many seconds.]

[Delegates Kameny and Corn call for Roll call vote]

CHAIRPERSON FREEMAN: How many people would like a roll call vote on closing the debate?

DELEGATE CORN: Roll call. Roll call.

CHAIRPERSON FREEMAN: Is that correct? Is that what you want the roll call for?

DELEGATE CORN: Not on closing the debate, on

the -- roll call on the adoption of the Article.

VOICE: We cannot have that now. The elevators are leaving.

CHAIRPERSON FREEMAN: I would like to have those who would like to have a roll call vote on closing debate raise your hands. That is the motion that is on the floor. All those who are in favor of closing debate, please say aye.

[Unanimous vote to close debate.]

All those in favor of adopting the Judiciary Article --

DELEGATE CORN: Roll call. Roll call.

VOICE: You already asked for that. You think we are deaf?

DELEGATE CORN: Roll call. Roll call. Roll call.

CHAIRPERSON FREEMAN: Are there any other delegates who would like a roll call vote?

[General agreement for show of hands.]

CHAIRPERSON FREEMAN: There will not be a roll call vote. All those delegates who are in favor of adopting the Judiciary Article --

DELEGATE ROTHSCHILD: Point of order. Point of order. [Inaudible. He demands a roll call vote.]

CHAIRPERSON FREEMAN: That is not true, Delegate

Rothschild. You are out of order. You are out of order on that.

VOICE: Let's go.

CHAIRPERSON FREEMAN: Please say aye.

[There is an overwhelming chorus of ayes.]

All those opposed.

[Corn and a few others opposed.]

Abstention.

[Several say, I pass.]

[The motion is passed.]

DELEGATE KAMENY: Announce it, announce it.

CHAIRPERSON FREEMAN: The Judiciary Article is adopted, Delegates, as amended.

[Applause and cheering.]

CHAIRPERSON FREEMAN: Delegates, I have one announcement; I want to remind you that 11:00 o'clock tomorrow we will have our pictures taken.

[Housekeeping announcement.]

May I hear a motion to adjourn?

DELEGATE SIMMONS: No, no, point of order.

CHAIRPERSON FREEMAN: Excuse me, Delegate Simmons?

DELEGATE SIMMONS: I have been trying to make a

statement for the record to the Chairman of the Judiciary Committee.

CHAIRPERSON FREEMAN: Oh, I am sorry. Delegates, Delegates, that is correct, Delegate Simmons wanted to make a statement for the record about the Chairman and the Members of the Judiciary Committee.

VOICES: Everybody is going. We don't have a quorum. The elevators are leaving.

CHAIRPERSON FREEMAN: Delegates. Delegates. [Rapping gavel.] We have not yet adjourned.

Delegate Simmons.

DELEGATE SIMMONS: I can put it in writing --

[Continuing off the record comments.]

CHAIRPERSON FREEMAN: Delegates, I am going to call for quiet one more time. We have not adjourned.

Delegate Simmons has the Floor.

DELEGATE SIMMONS: I wish to acknowledge the work and the energy and the efforts of this Committee. I particularly want to commend the Chair who held that fort for a very significant period of time by himself. I would hope that my observation of how the Committee did and did not support the Chair in preparing the document is instructive to other committees who are yet to report.

CHAIRPERSON FREEMAN: I second that, Delegate Simmons.

DELEGATE SIMMONS: I did want to say that I thought that certainly hard work had been done by all who officiated and no document is a perfect document.

And we should not be discouraged that this took so long -- took such a long time to pass because we are all neophytes at this Convention.

CHAIRPERSON FREEMAN: Delegate Barnes.

DELEGATE BARNES: I move to adjourn.

[Motion is made for adjournment.]

CHAIRPERSON FREEMAN: Is there a second to that?

[The motion is seconded.]

CHAIRPERSON FREEMAN: All those in favor of adjournment, please say aye.

[There is a chorus of ayes.]

Opposed.

[There is one nay. Motion passes.]

CHAIRPERSON FREEMAN: We are adjourned until tomorrow. Convention adjourned until tomorrow.

[Whereupon, the Convention recesses until the following morning.]

[Time of recess, 11:06 o'clock p.m.]